

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

KATHERINE MAGNER
DAVID MAGNER
Plaintiff Below,
Appellee

VS

DAVID WALLACE
DANIELLE WALLACE
Defendant Below,
Appellant

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§ C.A. No. JP17-19-003613
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TRIAL DE NOVO

Submitted: July 31, 2019
Decided: August 2, 2019

APPEARANCES:

Plaintiffs self-represented
Defendants self-represented

Alan Davis, Chief Magistrate
Sheila Blakely, Deputy Chief Magistrate
Scott Willey, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-19-003613

KATHERINE MAGNER ET AL VS DAVID WALLACE ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

PROCEDURAL POSTURE

Plaintiffs, David Magner and Katherine Magner, brought this action in their capacity as owner of a residence identified as 600 Delaware Avenue Delmar, Delaware. They initiated the action on June 18, 2019, seeking possession of the property based on failure to pay rent. The court scheduled the initial trial on July 08, 2019. The single Justice of the Peace ruled in favor of the Plaintiffs. Defendants brought a timely appeal.

The Court scheduled this case for a three judge panel on July 31, 2019. Chief Magistrate Davis, Deputy Chief Magistrate Blakely, and Judge Willey heard the appeal on that date. For the reasons stated below, the Court finds in favor of the Plaintiffs regarding summary possession and debt.

DISCUSSION

Plaintiff presented a case that consisted of the lease agreement indicating a monthly rent of \$1350.00 signed by all parties, and the 5-day letter given to Defendants pursuant to 25 Del. C. § 5502. The letter advised Defendants the rent was past due for the months of May and June, as well as utility, water, and sewer bills. The total amount due was \$3,307.29. Katherine Magner testified that the overdue amount has not been paid by Defendants.

Defendants testified there were several issues with the property, but did not establish that these issues warranted a reduction in rent. Defendants introduced an invoice from Above and Beyond Services for \$284.00 regarding a water leak which occurred at night. Danielle Wallace testified water was leaking through the ceiling and into a light fixture in a bedroom. Both parties agreed a text message was sent to Plaintiff regarding the leak. Given the hazardous nature of this incident, Defendants contacted Above and Beyond Services to repair the HVAC unit causing the leak.

The Court finds that Plaintiffs proved by a preponderance of the evidence that Defendants have not paid rent or utilities for the months of May, June, and July. Due to the repair bill paid by Defendants, they are entitled to a set-off of \$284.00 credited to the balance owed.

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JUDGMENT

Accordingly, the Court enters judgment for David Magner and Katherine Magner and against David Wallace and Danielle Wallace in the amount of \$4,423.29 (\$4707.29 - \$284.00 set-off) plus \$165.00 court costs. Possession of the property is awarded to Plaintiffs. Rent will continue to accrue at \$45.00 per day until possession is obtained by Plaintiffs. Post judgment interest shall accrue at legal rate of 7.75%.

IT IS SO ORDERED 02nd day of August, 2019



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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